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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**ASSESSMENT OF TRADE IN SERVICES OF DEVELOPING COUNTRIES:
SUMMARY OF FINDINGS**

Background note by the UNCTAD secretariat

Introduction

1. As recognized at UNCTAD IX, the ability of developing countries to integrate successfully into the global trading system will depend on their increasing their participation in world trade in services. This will in turn depend on their ability to strengthen their capacity to produce internationally competitive services and on the extent of liberalization in the service sectors of export interest to them. In "A Partnership for Growth and Development" (TD/378/rev.1), refocused UNCTAD's work programme on services to concentrate, *inter alia*, on:

- (a) Enabling developing countries to identify impediments to trading success, including barriers to export expansion and diversification (para. 91(i));
- (b) Assisting developing countries in strengthening their capacities in the services sector, as well as in identifying export opportunities by undertaking directly related sectoral analysis (para. 91 (ii));
- (c) Assisting developing countries in accessing data on trade in services (para 97 (ii));
- (d) Supporting the formulation of national policies promoting services infrastructure for development and trade efficiency (para. 97 (iii));
- (e) Improving the general understanding of trends and changes in flows of foreign direct investment (FDI) and related policies, the interrelationships between FDI, trade, technology and development, and issues related to transnational corporations (para. 89(a)).

2. The above-mentioned work programme has been implemented by different divisions of UNCTAD through analytical studies (see annex), statistical work, the development of a database on measures affecting trade in services (MAST) and technical assistance activities, in particular the Coordinated African Programme of Assistance in Services (CAPAS). Since the ninth Conference was held in Midrand, expert meetings have been held on among other topics, health services, tourism, environmental services, and air transport services. Expert meetings have also been held on the legal and regulatory aspects of electronic commerce and on the sharing of experiences on electronic commerce among small and medium-sized enterprises (SMEs). Work has also been carried out on audiovisual, construction, multimodal and maritime transport, financial services and accountancy. Issues related to competition policy have also been studied.

3. The Commission on Trade in Goods and Services, and Commodities, which supervises the work relating to trade in services at its third session, mandated UNCTAD, *inter alia*, to prepare jointly with the World Trade Organization (WTO) an assessment of the impact on developing countries of liberalization under the General Agreement on Trade in Services (GATS). Following consultations with

the WTO secretariat, it was decided that UNCTAD would await the background document on this assessment, which would be prepared by the WTO secretariat, and on the basis of which UNCTAD could further examine the particular interests of developing countries, particularly those related to the objectives of GATS article IV, as stipulated in article XIX.3. In the meantime, UNCTAD is prepared to provide elements and findings from its ongoing work to complement the work already undertaken by the WTO secretariat. The sectoral work undertaken by UNCTAD contains a wealth of sector-specific data and analysis relevant to the objectives of increasing the participation of developing countries in international trade in services and formulating guidelines for a future round of negotiations on services.

4. UNCTAD and WTO have already undertaken joint work in a number of areas, including a joint study entitled "Market access: developments since the Uruguay Round, implications, opportunities and challenges, in particular for the developing countries and the least developed among them, in the context of globalization and liberalization", (E/1998/55) for the Economic and Social Council in 1998, which included a chapter on services. This chapter identified the movement of natural persons as the mode of supply in which most substantial restrictions are imposed, and economic needs tests as a major barrier to the expansion of service exports of developing countries. A joint study was entitled "Strengthening the participation of developing countries in world trade and the multilateral trading system" was carried out in 1996, which included sections on improving market access in commercial services and improving the domestic supply response.

A. Role of services in the economies of developing countries

5. The material prepared by the WTO secretariat has emphasized the lack of internationally comparable statistics on services. UNCTAD has been working in close coordination with WTO and with other members of the Inter-Agency Task Force of Statistics on International Trade in Services in the preparation of the Manual on Statistics of International Trade in Services. In this effort, UNCTAD's input addresses the conceptual and measurement problems of the statistical treatment of trade flow in services, related to the movement of natural persons, and is included as an annex to the manual. The terms of reference for this work were prepared in close consultation with WTO staff.

6. Nevertheless, sectoral studies by WTO and UNCTAD indicate that in specific sectors, such as tourism and air transport, extremely detailed sectoral statistics do exist. An overview of statistics on services indicates the limitations of global data on trade in services, for the purposes of comparison; the contribution of services to the growth and transformation of developing countries, and the important role of services in employment creation. They also show that:

(a) Balance-of-payments statistics relate mainly to the cross-border mode of supply;

- (b) Most developing countries have a deficit in trade in services, except in the areas of tourism and travel and worker remittances;
- (c) For some developing countries, growth in imports of services is more important than growth in exports, as they depend to some extent on imports of professional and technical services;
- (d) Since the adoption of GATS, developing countries' share of world service exports has increased by a small percentage i.e. 6 per cent, thanks to the export competitiveness of Asian developing countries.
- (e) Developed countries account for three-quarters of world exports of services and most of the top 20 exporters are from developed countries; and
- (f) There is no empirical evidence to link any significant increase in FDI flows to developing countries with the conclusion of GATS.

7. Given the paucity of desegregated data, any assessment of trade in services has to be based primarily on a qualitative analysis. The GATS commitments provide a substantial foundation for future efforts to liberalize international trade in services, providing unprecedented information on impediments.

8. Developing countries have made substantial commitments under GATS with respect to many service industries, often binding recently adopted legislation or pre-committing future policies without having had much experience in their implementation, and have undertaken a higher share of full bindings under the cross-border and commercial-presence modes of supply. In contrast, they have not received concessions of any meaningful economic value under the movement-of-natural persons mode of supply.

Services and contribution to Long-term economic development

9. Services reinforce economic efficiency, and the development of producer services is particularly important in this regard. Infrastructural services particularly telecommunications, financial and transport services make an important contribution to the competitiveness of goods and services exports. We should not ignore the social dimension of services and the link between certain basic service sectors (Infrastructural services as well as health and education) and sustainable development and public welfare. Services also make a significant contribution to employment creation in developing countries.

10. Unfortunately, there is a lack of awareness in many developing countries about the key role of services in development, and this leads to a lack of coherence in their policies. This lack of coherence may in turn, deter potential investors and impede trade despite the absence of impediments to market access.

11. Some developing countries have been successful in increasing their exports of services by building on various elements of their comparative advantage. In fact, for many developing countries, the export of services is their only means of diversification, and the only way they can move away from excessive dependence on export of primary commodities.

B. Sectoral analysis

12. UNCTAD's sectoral analysis and the outcomes of the sessions of the Commission on Trade in Goods and Services, and Commodities and of the expert meetings convened by the Commission demonstrate that there are niche opportunities for the expansion of trade in six sectors in which developing countries have an apparent or potential comparative advantage, particularly through the movement of natural persons. These sectors are professional and business services (such as computer and office services), health services, tourism, construction, audiovisual services and transport. However, niche opportunities change rapidly, driven in part by technological change and this requires a capacity to adapt promptly and rapidly to new market circumstances. The expert meetings revealed that several characteristics of these service sectors are probably shared with many other sectors.

(i) Supply Constraints

13. Most developing countries face major supply constraints and do not satisfy the preconditions for building a competitive service sector. These preconditions are particularly important in ensuring that liberalization makes a positive contribution to the achievement of their social, developmental and environmental goals, as UNCTAD's national studies, particularly those undertaken within the CAPAS programme, have demonstrated. These preconditions include:

- (a) Human resource development and technological capacity-building to ensure that professional and quality standards are met;
- (b) Upgrading of the telecommunications infrastructure;
- (c) A coherent pro-competitive regulatory framework for goods and services and trade and investment, which should include incentives to enhance the competitiveness of service firms;
- (d) A national strategy for the export of services, to raise the profile of service industries and exports within the country so that everyone understands how vital they are to economic development;
- (e) Government support to help service firms, particularly SMEs, to improve the quality of the services they provide as well as to access new technologies and management techniques;
- (f) The establishment of service industry associations to introduce or reinforce codes of conduct for professionals, to put their members in touch with potential partners in target markets, and to voice the needs of the service industry they represent;
- (g) An increase in the financial capacity of service firms;
- (h) Promotion of their exports;

- (i) A higher profile for telecommunication and information technologies to promote the export of labour-intensive services through the cross-border mode of supply;
- (j) The use of new business techniques, such as the creation of alliances and consortia and networking;
- (k) A presence in major markets;
- (l) The capacity to exploit the opportunities offered by regional markets;
- (m) The ability to offer a package of services; and
- (n) The use of the knowledge and capacity built up in manufacturing and agricultural sectors to export service-related activities and to offer an integrated package of goods and services.

(ii) Interdependence of modes of supply

14. Sectoral studies demonstrate that all four modes of supply - cross-border, consumption abroad, commercial presence and movement of natural persons - are relevant for trade in services in any given sector and trade through one mode often leads to increased trade through other modes. Indeed, the interdependence of modes of supply requires that modes be utilized in combination to access markets effectively. To do this requires the liberalization of all factors of production (labour, capital, information and technology). The modal approach has created a flexible framework for liberalization under GATS, in that it allows countries to move further in liberalizing in one mode (e.g. commercial presence), than in others (e.g. cross-border or movement of natural persons). It also allows them to make trade-offs between different modes of supply. UNCTAD's work has given particular emphasis to the cross-border mode of supply, in view of the opportunities offered by electronic commerce for the supply of long-distance labour-intensive services, and to the movement of natural persons, since developing countries have a comparative advantage in labour-intensive services, which can be traded through either of these modes.

15. It is increasingly difficult for developing countries to supply services through the movement-of-natural-persons mode given the important barriers to market access and national treatment. Information technology has created major new opportunities for developing countries in long-distance service exports (if the necessary hardware and software, telecommunications infrastructure and financial and human resources are available). As electronic commerce involves the cross-border mode of supply, developing countries have greater opportunities to export services through information technology networks without moving natural persons and without undertaking heavy investment to establish a commercial presence this investment is another major constraint on the exports of developing countries.

(iii) Movement of natural persons

16. The lack of commercially meaningful commitments (except on intra-corporate transferees) on the movement of natural persons, which is essential for the supply of a service by developing countries, has been highlighted in all the sectoral papers produced by UNCTAD as well as in the discussions at the

sessions of the Commission and expert meetings. This lack of access creates a major imbalance in trade. Barriers to this mode relate to the horizontal nature of the commitments (limiting access to intra-corporate transferees), strict and discretionary visa and licensing requirements, lack of recognition of qualifications and economic needs tests.¹ Transparency with respect to measures affecting the movement of natural persons is critical for increasing the participation of developing countries in international trade in services.

17. These barriers prevent technicians and businesspersons from developing countries' from participating in a variety of activities that are essential to the penetration of world markets for services. Owing to their discretionary nature (especially where criteria are not clearly specified), economic needs tests represent a major barrier to trade in services, particularly with respect to the movement of natural persons, and are a source of considerable uncertainty as to the level of a country's commitment under market access. A commitment made subject to an economic needs test provides no guarantee of access. Reducing the scope of these tests and scheduling specific criteria for their application and their eventual removal, particularly with respect to clearly identifiable categories of professions, will be central to future efforts to liberalize trade in services and to increase the participation of developing countries in it. The movement of service providers could also be facilitated by the use of "GATS visas" that would allow them to move in and out of markets for the purposes of business development and service delivery without time-consuming visa requirements or the need to have been invited.

(iv) Other critical barriers to market access

18. A number of other barriers faced by service suppliers from developing countries have been identified in UNCTAD's sectoral analysis. They are:

- (a) Prohibition of foreign access to service markets reserved for domestic suppliers: nationality, residency or visa requirements can prohibit or limit the movement of natural persons;
- (b) Price-based measures: entry and exit taxes and visa fees for the movement of natural persons; discriminatory airline landing fees and port taxes, licensing fees; tariffs on goods in which services are embodied or for goods that are necessary inputs in the production of services (e.g. computer software on disk, computers, telecommunications equipment);
- (c) Subsidies granted in developed countries (e.g. for construction, communications, transport, health, or education), including for high-technology sectors, as well as

¹See UNCTAD, "Information on the temporary migration regime in force in selected developed countries" (UNCTAD/SDD/SER/7) and "Harmonization and recognition of professional qualifications" (UNCTAD/SDD/SER/2).

horizontal subsidies and investment incentives that can have a trade-distortive impact on exports from developing countries. While financial constraints generally place service suppliers from developing countries at a disadvantage, enterprises from developed countries benefit from financial support from their Governments: for example, trade flows in construction services are affected by heavy government subsidies to export enterprises, tied aid, external financing packages and so on;

- (d) Technical standards and licensing: in certain professional business services, the licensing of financial services and standard-setting have been used to restrict entry into the industry. Mutual recognition agreements are particularly important in facilitating trade. Non-participation in such agreements can result in effective exclusion from markets. Complex environmental and safety regulations, standardization and registration procedures all act as important deterrents to participation in the construction sector. The problem is compounded in some countries when these procedures vary from one state or region to another;
- (e) Discriminatory access to information channels and distribution networks: for example, suppliers of the telecommunications network may discriminate by excluding certain users, charging higher fees or imposing restrictions on attaching equipment. In the air transport sector, discrimination in the availability and cost of ancillary services may reduce the competitiveness of an airline; slot allocations and the prohibitive cost of owning a slot in major airports, as well as access to computer reservation systems (CRS) and global distribution system (GDS) could also be used to exclude potential service suppliers, as could limitations on advertising and marketing;
- (f) Lack of transparency in government measures (e.g. immigration legislation and procedures) the practices of mega firms are another major barrier to market access for developing countries;
- (g) The growing importance of financing in winning projects in export markets and the difficulties developing countries face in trying to tap international financial markets; and
- (h) Lack of access to government procurement orders and buy national preferences (e.g. in construction services).

C. Competition- related issues

19. Many markets for services are dominated by relatively few large firms from developed countries and a number of small players. This tends to lead in most service sectors to a position where the larger operators face little effective competition because the size of the next tier of competitors is so small.

(For example, in tourism, 80 per cent of the market belongs to Thomson, Airtours, First Choice and Thomas Cook). Service providers from developing countries most of whom are SMEs, face competition from large service multinationals with massive financial strength, access to the latest technology, worldwide networks and a sophisticated information technology infrastructure.

20. This high degree of concentration is often a consequence of the enormous volume of capital and the complex networks of interdependent organizations needed to maintain technological advantage, to exploit several products simultaneously and to maintain economies of scale. For example, in advertising, auditing and management consulting, relations with customers are established on a worldwide basis, making it difficult for enterprises from developing countries to gain access to world markets.

21. The trend in mergers and acquisitions and strategic alliances has exacerbated this situation. UNCTAD's studies on health, tourism, air transport and construction have highlighted the possible anti-competitive impact of these new business technique. For example, vertical integration between tour operators and travel agents creates considerable market power that puts competitors at a disadvantage.

22. Customer demand is resulting in the "bundling" of complementary services through various forms of strategic alliance. In addition, customer demand for quality assurance and predictability has led to an increase in various forms of integrated global delivery network such as franchise chains, multi-site management companies (e.g. in managed health care), computer reservations systems and global distribution systems.

23. A number of key competition issues also are raised by the manner in which distribution channels and information networks for several services are structured. For example, in tourism and air transport the strategic global alliances and global distribution systems have restricted competition and have served as major barriers to market entry by developing countries. There have been significant problems with display bias on CRS and GDS screens, the global branding of flights create consumer loyalty, and the tying-up of hub airports. The barriers to access have been identified in the paper entitled "ways of enhancing access to and use of information networks and distribution channels", (TD/B/CN.4/42).

24. Network affiliation can provide firms from developing countries with an international reputation, the benefits of research and development, and the possibility of moving more rapidly towards higher value-added products, training and soft technology transfer. It can also give their professional staff the opportunity to transfer to other markets. Firms can also join with like minded firms from other developing countries to form global networks that compete with the established service multinationals in niche markets. As the globalization of markets increases, it will become increasingly difficult for service firms to succeed without entering into some form of strategic alliance. However, as strategic alliances may develop into de facto industry standard-setters or price-setters - and thus will share the

potential to erect new entry and access barriers there is a need to pay particular attention to the design and development of national and international competition policies.

25. There is a need for measures to discipline anti-competitive behavior. This would involve the development of national competition rules as well as multilateral mechanisms to strengthen cooperation amongst competition authorities to deal with transfer pricing, exclusive dealing arrangements, alliances and export cartels. The expert meetings on tourism and transport recommended adoption of an annex on tourism services and a reference paper on transport to provide for competition safeguards along the lines of the basic telecommunications Reference Paper.

D. Electronic commerce

26. Advances in information technology have facilitated the tradeability of services and provided enterprises in certain countries with competitive advantages in the world market. The development of telecommunications networks and information technology and its declining costs mean there are opportunities to develop new competitive strengths by "unbundling" the production and consumption of information-intensive activities (e.g. computing, research and development, inventory management, quality control, accounting, legal services, marketing, advertising, and distribution), and by externalization of these activities and international out sourcing. The Internet is also changing market structures and sometimes eliminates the need for intermediaries. New distribution channels or "infomediaries", are already influencing trade.

27. Presently only a few developing countries are using the Internet to access foreign markets to supply services. For the time being, developing countries are mainly consumers of Internet-based services. Many developing countries suffer from an inadequate infrastructure for electronic commerce and from a lack of access to information technology. The cost of such infrastructure is an important barrier to export expansion. Other reasons for not using the Internet for transactional purposes are the lack of awareness among companies from developing countries of the relevance of the digital economy, as well as the high cost of setting up a good-quality website. Attention needs to be paid to the impact of competition, particularly competition from the dominant brand names of developed countries, on the market access of SMEs from developing countries. These SMEs suffer from low levels of productivity, poor product quality and lack of access to credit and training, but nevertheless have a crucial role to play in generating employment. The impact of capital outflows from developing countries as a result of electronic commerce also requires further attention. For developing countries to benefit from the opportunities offered by electronic commerce, it is important that the provisions in GATS articles IV and XIX.2 and the provision on technical and financial cooperation in the Annex on Telecommunications are faithfully implemented.

28. A substantial range of transactions carried out by electronic means is already covered under GATS. The main advantage offered by electronic commerce in services is that it permits persons in

developing countries to offer their skills in world markets without having to leave their own countries, thus benefiting from what has been termed a low-cost/high-tech comparative advantage. The Internet will also permit them to advertise their services. It should be noted, however, that if supply through the cross-border mode is preferred to commercial presence, this could reduce the flow of FDI, the transfer of technology and management techniques, and employment opportunities. It could also lead to demands by foreign firms to seek a right of non-establishment (as provided for in the North American free Trade Agreement).

29. The Internet provides developing countries with the opportunity to obtain hitherto inaccessible and unaffordable information, and the resulting transfer of know-how could stimulate the expansion of their exports of services. Efforts need to be made to ensure that the access of developing countries to transborder data flows is not constrained, as information constitutes an increasingly important factor of production.

30. One area of concern is the difficulty in determining exactly where a transaction has actually taken place, which raises a number of jurisdictional issues. These issues can pose particular problems for developing countries, given that they have weak regulatory frameworks and lack enforcement capacity. There is a need to develop international mechanisms to regulate and harmonize transborder legal questions and provide for competitive safeguards against the creation of monopolies.

E. Access to information and transfer of technology.

31. As mentioned above, Information constitutes an increasingly important factor of production. The information asymmetry between developed- and developing-country suppliers is particularly marked in services, and ways need to be found to improve the access of suppliers from developing countries to information. Internet-based electronic commerce is an important feature of a technology-based economy driven by the dynamic gains of technological leadership. While developing countries face major barriers in accessing technology, the technological leadership of the developed countries could result in consolidating the dominant market position of the present market leaders. For example, the wider diffusion of information technology in the construction and engineering design industry would be particularly important in increasing developing countries' capacity to export. The weakness of developing countries in engineering design stems from knowledge-intensive nature of the service and the importance of information technology in its production and delivery. This technology has made savings in time and labour possible, mainly in developed countries, and allows users to adjust quickly to changing market conditions. As a result, engineering design has become far cheaper, faster and more accurate. However, investing in information technology is a costly and risky undertaking, owing in part to its capital requirements, the proliferation of standards and the rapid obsolescence of systems.

F. Impact of Liberalization

32. The liberalization of trade in services, notably through the commercial-presence mode of supply, can make a major contribution to the achievement of developmental and social goals. However, certain conditions must usually be met if liberalization is to have a positive impact. Liberalization commitments need to take fully into account the particularities of the service sector in the country concerned and the relationships between sectors. An adequate regulatory structure has to be in place for prudential purposes, to ensure respect for technical standards, professional qualifications, and so on. It has been clearly shown that the liberalization of the financial services sector should be preceded by the implementation of sound prudential legislation and macroeconomic policies. In the health sector, the presence of foreign suppliers can strengthen or weaken the health-care system depending on the structure of the domestic health system and related insurance sector. In the environmental services sector, foreign suppliers can make a positive contribution to the protection of the environment if technically adequate, enforceable legislation is in place, and obviously if the developing country concerned can afford to pay for such imported services. The development of tourism may not have a positive impact on a country's economy if it is not integrated into the local economy and if leakage is significant. The process under article VI of GATS of developing disciplines to ensure qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, is of considerable importance in ensuring that the benefits of liberalization commitments on the national economy are maximized. Decisions as to where to make such commitments should take into account the possible social developmental or environmental "dividends" of liberalization.

G. Data base on measures affecting services trade (MAST)

33. UNCTAD was requested² to develop MAST as a means of promoting transparency among trading partners in the area of services. MAST is designed to provide negotiators, policy makers, businessperson and academics with user friendly to legal information on measures applied to services as defined by GATS. The information is structured according to (a) the country that applies the measure, (b) the services sector or subsector affected by the measure, as defined by the GATS classification and the Central Product Classification, (c) the mode of supply affected, and (d) the type of measures used, as defined in GATS article VI, on domestic regulations, article XVI, on market access and article XVII, on national treatment. MAST is available on CD, with a set of Windows applications, and soon it will be possible to download it from the UNCTAD website.

² Item 2(b) of the Work Programme of the Standing Committee on Developing Services Sectors: Fostering Competitive Service Sectors in Developing Countries called upon the Committee to collect and disseminate information on measures, including laws and regulations affecting the access of services and service suppliers to world markets.

34. The database is in an experimental phase. It contains more than 2,000 records on national laws and regulations from 90 countries. The software is available to all interested Governments that wish to process their national laws. Some regional groups have used MAST as a common database as they proceeded with the of mutual liberalization of services. MAST complements the existing WTO database on commitments, in that it covers all measures and sectors, not only those subject to commitments in GATS, and identifies the law or regulation involved. MAST has been demand driven and thus contains more information on those countries or subregional groupings that have used it for their own purposes. There are therefore major gaps in its country coverage. The UNCTAD secretariat intends to seek the views of States members of UNCTAD at the next session of the Commission on Trade in Goods and Services, and Commodities, in September 1999, on how best to fill these gaps.

ANNEX
SELECTED DOCUMENTS ON SERVICES PREPARED BY THE
UNCTAD SECRETARIAT:

Date	Title	Symbol
15 April 1999	Air transport services: the positive agenda for developing countries	TD/B/COM.1/EM.9/2
4 May 1999	Legal dimensions of electronic commerce	TD/B/COM.3/EM.8/2
21 Sept. 1998	Implications for trade and development of recent proposals to set up a global framework for electronic commerce	TD/B/COM.3/17
24 July 1998	Scope for expanding exports of developing countries in specific services sectors through all GATS modes of supply, taking into account their interrelationship, the role of information technology and of new business practices	TD/B/COM.1/21
27 July 1998	Statistical annex	TD/B/COM.1/21/Add.1
15 May 1998	Electronic commerce: legal considerations	UNCTAD/SDTE/BFB/1
12 May 1998	Strengthening capacities in developing countries to develop their environmental services sector	TD/B/COM.1/EM.7/2 12
1998	Market access: developments since the Uruguay Round, implications, opportunities and challenges, in particular for the developing countries and the least developed among them, in the context of globalization and liberalization.	E/1998/55
1998	International trade in health services: a development perspective	UNCTAD/ITC/D/TS B/5
2 April 1998	International trade in tourism-related services: issues and options for developing countries	TD/B/COM.1/EM.6/2

Date	Title	Symbol
7 April 1997	International trade in health services: difficulties and opportunities for developing countries	TD/B/COM.1/EM.1/2
2 Sept. 1997	Ways and means for improving the opportunities for the expansion of exports of goods and services from developing countries	TD/B/COM.1/13
1996	Strengthening the participation of developing countries in world trade and the multilateral trading system	TD/375/Rev. 1
6 March 1996	Services and the environment	UNCTAD/SDD/SER/6
25 Sept. 1995	Information on the temporary migration regime (laws and implementing regulations) in force in selected developed countries	UNCTAD/SDD/SER/7
28 July 1995	Ways of enhancing access to and use of information networks and distribution channels	TD/B/CN.4/42
31 July 1995	Impact of progressive liberalization and of service imports on the development of competitive services sectors, and the difficulties faced by developing countries which prevent them from increasing their participation in world trade in services	TD/B/CN.4/43
August 1994	The outcome of the Uruguay Round: an initial assessment. Chapter VII: General Agreement on Trade in Services	UNCTAD/TDR/14 (Supplement)
4 October 1993	The impact of subsidies on trade in services	UNCTAD/SDD/SER/3
15 Sept. 1993	The concept of services trade statistics	UNCTAD/SDD/SER/1
14 Sept. 1993	Harmonization and recognition of professional qualifications	UNCTAD/SDD/SER/2

Date	Title	Symbol
7 Sept. 1993	The collection and dissemination of information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets, including consideration of the possibility of setting up a computerized database (database on measures affecting service trade)	TD/B/CN.4/26
3 Sept. 1993	Temporary movement of persons as service providers	TD/B/CN.4/24
27 August 1993	Fostering competitive services sectors: a comparative analysis of services sectors in developing countries	TD/B/CN.4/23
1996, 1997, 1998	World Investment Report (WIR)	UNCTAD/ITE/ITT 5 UNCTAD/DTCI/32 UNCTAD/WIR/1998
	Directory of the World's Largest Service Companies, Series I, December 1990 (Moody's Investors Service, United Nations Centre on Transnational Corporations)	Series I, Dec. 1990

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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

LISTS OF ECONOMIC NEEDS TESTS IN THE GATS SCHEDULES OF SPECIFIC COMMITMENTS

Executive Summary

The majority of countries have maintained the right to use economic needs tests to regulate trade flows in their GATS schedules of specific commitments on services. Movement of natural persons supplying services is most frequently affected by the need to pass quantitative and/or qualitative tests. Only 22 WTO member countries have clearly indicated those few categories of natural persons for which such tests do not apply. Developing countries have exhibited comparative advantage of trade in services through the movement of natural persons, but economic needs tests detract from the predictability of trading opportunities available to them. Further liberalization of trade in services cannot succeed without addressing the issue of economic needs test. Since many countries would hardly be ready to abandon the use of such tests at present, guidelines related to criteria, duration and procedures for application could be developed multilaterally. Furthermore, developing countries would benefit if - at least for selected categories of natural persons as service providers - non-application of economic needs tests were to be extended to selected services sectors. The use of economic or similar tests in other instruments regulating market access should be prevented. In addition, each WTO member country could establish thresholds below which such tests would not apply by way of minimum quotas for entry of natural persons supplying services.

A. Main concerns with the use of economic needs tests

1. Economic needs tests have been identified as a barrier to market access under Article XVI of the WTO General Agreement on Trade in Services (GATS). However, neither the definition of an economic needs test, nor the rules, criteria or procedures for its application were elaborated. As a result, economic needs tests may have a more or less distortive impact on trade depending on the manner in which they are implemented. At the same time, legal provisions are absent in the GATS to challenge any rejection on the basis of the economic needs test. This also limits the possibilities for comparison of the scope of needs tests among countries. Though economic needs tests are scheduled with respect to all GATS modes of supply of services, i.e. cross-border trade (mode 1), consumption abroad (mode 2), commercial presence (mode 3) and presence of natural persons (mode 4), the last of these is the one most frequently subjected to tests, whether the service concerned is supplied under mode 4 or in conjunction with mode 3. Thus, the presence of economic needs tests remains a major trade barrier to the movement of natural persons as service suppliers. Transparency is a prerequisite to being able to assess existing trading opportunities, but economic needs tests make this process less predictable and stable and more burdensome. The main issue is how to decrease the degree of subjectivity associated with economic needs tests.

B. Economic needs tests in specific commitments concerning all sectors

2. The exception to general situation concerns a few countries which have stated in their GATS commitments for all sectors that an economic needs test does not apply to market access in mode 4 for a few categories of services providers (see table 1).

TABLE 1

Economic needs tests exemption list

Country	Relevant extracts from national schedules of specific commitments
Australia	Independent executives, <u>without requiring compliance with labour market tests</u> , for periods of initial stay up to a maximum of two years. Service sellers, as business visitors, <u>without requiring compliance with labour market tests</u> , for periods of initial stay of 6 months and up to a maximum of 12 months. Specialists: <u>Labour market testing is not required</u> for (i) natural persons who have specialized knowledge at an advanced level of a proprietary nature of the company's operations and have been employed by the company for a period of not less than two years and (ii) if the position in question is within a labour agreement in force at the time of application.
Austria	Temporary stay and work of natural persons falling within the following categories, <u>without requiring compliance with an economic needs test</u> and under the condition that all other requirements of Austria's laws and regulations regarding entry, stay and work shall continue to apply: intra-corporate transferees; persons working in a senior position within a juridical person; persons working within a juridical person who possess uncommon knowledge essential to the establishment's service.
Czech Republic	Temporary entry, stay and work, <u>without requiring compliance with economic needs test</u> , of the following categories of natural persons supplying services: as intracorporate transferees; business visitors.
European Union	Measures concerning the entry into and temporary stay within a Member State, <u>without requiring compliance with an economic needs test</u> , of the following categories of natural persons providing services: intra-corporate transferees (senior management, persons who possess uncommon knowledge essential to the establishment's service, business visitors (with reservations for France and Italy).

Country	Relevant extracts from national schedules of specific commitments
Finland	Executives and managers – <u>without requiring compliance with labour market tests</u> to persons who primarily direct the management of the organization or its department.
Iceland	Intra-corporate transferees, which Iceland shall permit <u>without requiring compliance with labour market tests</u> : executives, managers, specialists, service sellers.
Israel	Israel shall permit, <u>without requiring compliance with labour market tests</u> , the temporary entry of service providers as intra-corporate transfers in the following categories: executives, managers.
Norway	Temporary presence and <u>without requiring compliance with an economic needs test</u> of categories: executives/ managers, specialists, business visitors.
Slovakia	Temporary entry, stay and work, <u>without requiring compliance with economic needs test</u> , of the following categories of natural persons providing services: intra-corporate transferees; essential senior executives; specialists who possess high or uncommon qualifications and knowledge essential to the establishment's service, research equipment techniques or management.
Slovenia	Unbound, except for measures concerning the entry into and temporary stay, <u>without requiring compliance with an economic need test</u> , of a natural person who falls in one of the following categories: business visitors, intra-corporate transferee.
South Africa	Temporary presence for a period of up to three years, unless otherwise specified, <u>without requiring compliance with an economic needs test</u> , of the following categories of natural persons providing services: services salespersons; intra-corporate transferees.

Source: Based on Schedules of Specific Commitments on Services of 134 WTO member countries.

3. The above commitments indicate that only commercial-presence-related categories of persons are excluded from the application of the needs tests. In that respect, all trade in services based on mode 4 could potentially face economic needs tests which have not been explicitly spelled out in commitments but may be contained in the national legislation. Furthermore, unspecified general requirements of residency, authorization, approval, etc., could also contain elements of a needs test.

4. Of 134 WTO members, 67 have used economic needs tests to regulate trade flows in one or more modes and all or selected services sectors. Economic needs tests have qualified commitments on market access in all sectors in a few countries, but others may also apply them since no mechanism exists in GATS to limit the scope of their application. Some countries have identified categories of persons that are likely to be subject to needs tests in their horizontal commitments, but this does not mean that these and other countries would not apply needs tests to categories of persons not included in the schedules of commitments.

TABLE 2

List of economic needs tests in horizontal commitments - market access for natural persons

Country	Relevant extracts from national schedules of specific commitments
Antigua and Barbuda	Normally, a work permit will be issued for a specific period to a non-national to fill a particular post and only when <u>qualified nationals are unavailable</u> . This requirement is to ensure that suitable nationals are given an opportunity to fill the vacancy.
Australia	Specialists, subject to individual compliance with <u>labour market testing</u> , for periods of initial stay up to a maximum of two years with provision of extension provided the total stay does not exceed four years.
Barbados	Prior to a natural person working in Barbados a work permit must be obtained. <u>Labour market tests are conducted</u> .
Belize	Unbound, except for senior managerial personnel and technical experts <u>not available in the local labour market</u> .

Country	Relevant extracts from national schedules of specific commitments
Brazil	Foreign specialized technicians and highly qualified professionals may work under a temporary contract with legal entities, whether of national or foreign capital, established in Brazil. The pertinent contract must be approved by the Ministry of Labour. Approval of contracts of specialized technicians and highly qualified professionals takes into account the compatibility of their qualifications with the area of business in which the company is engaged. The company must justify the need to contract such professionals and technicians <u>in relation to similar professionals and technicians available in Brazil</u> .
Chile	For transfers of specialized personnel within a foreign enterprise established in Chile: Specialized personnel are those highly qualified persons who are indispensable to the supply of the service because of their professional knowledge or: <u>non-availability of such specialized personnel in Chile</u> .
Cuba	Measures on the entry and temporary residence of natural persons in the senior and specialist categories when related to commercial presence under the terms and conditions agreed upon, provided that this personnel is <u>not available in Cuba</u> .
Cyprus	Entry permits for employment are issued on a temporary basis in fields and occupations where no suitably qualified local personnel is available, always taking into account the employment situation and <u>economic needs of the country</u> .
Dominica	The employment of foreign natural persons is subject to Work Permit regulations and labour laws. Issue of permits is normally confined to people with managerial and technical skills which <u>are in short supply or not available in Dominica</u> .
Finland	Temporary entry of specialists - in compliance <u>with labour market tests</u> those persons within the organization, who possess knowledge at an advanced level of expertise or otherwise essential or proprietary to the organization's service, research equipment, techniques or management.
Gambia	Entry and stay of natural persons employed in management and experts jobs for the implementation of foreign investment: the conditions or requirements for an approval for expatriate quota/staff are payment of payroll tax; minimum investment; <u>unavailability of qualified Gambian for the position</u> .
Grenada	The entry of all foreign natural persons is subject to Work Permit Regulations. Issue of permits is normally confined to people with managerial and technical skills which <u>are in short supply or not available in Grenada</u> .
Guatemala	The Labour Code provides the following: employers must employ 90 per cent Guatemalan workers and pay them at least 85 per cent of total wages paid. These requirements may be modified for the following reasons: protection and promotion of the national economy; <u>lack of Guatemalan</u> technical personnel for specific activities; defence of Guatemalan workers who demonstrate their capabilities.
Guyana	Unbound, except with respect to measures relating to senior managerial personnel and technical experts <u>not available in the local labour market</u>
Indonesia	Manager and technical experts (intra corporate transfer) are allowed <u>based on an economic needs test</u> .
Israel	Work permit will be issued <u>in compliance with the labour market tests</u> to those intra-corporate specialists, who possess knowledge at an advanced level of expertise or otherwise essential or proprietary to the organization's service, research equipment, techniques or management
Jamaica	Work permits and visas are normal requirements for entry and in some cases licensing may be a prerequisite for practising in certain specified professional categories. The Work Permit Review Board must be satisfied that the <u>skills to be employed are unavailable locally</u> .
Malaysia	Intra-corporate transferees: Additional specialists or experts may be allowed <u>subject to market test</u> in the relevant services sector or subsector. Others: Specialists or experts being persons who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organizations's products and services <u>subject to market test</u> and the employment of Malaysians as counterparts and/or training of Malaysians through acceptable training programmes in the relevant services sector or subsector.
Mongolia	Entry and temporary stay of natural persons with managerial and technical skills which <u>are in short supply in Mongolia</u> , and fall within the following categories: business visitors, intracorporate transferees and professionals under a service contract.
Netherlands with respect to	A <u>test of economic needs</u> is applied to all categories of natural persons.

Country	Relevant extracts from national schedules of specific commitments
Netherlands Antilles	
Netherlands with respect to Aruba	For market access and national treatment: As a general rule non-Arubans cannot establish as self-employed. Permission will only be granted if they possess <u>expertise not available in Aruba</u> .
New Zealand	Specialist personnel, <u>subject to labour market tests</u> , as intra-corporate transferees, for periods of stay up to a maximum of three years.
Papua New Guinea	Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories: managers and specialists who possess knowledge that is necessary for the provision of the service. Entry is limited to those of key importance and <u>where employees are unavailable locally</u> .
Poland	Key personnel in conformity with the Polish law meaning managers or specialists, possessing high or uncommon qualifications or knowledge necessary for the functioning of the enterprise. <u>Market test requirement</u> .
Saint Lucia	The employment of foreign natural persons is subject to Work Permit regulations. The issue of permits is normally confined to persons with specialized managerial and technical skills and the administration of the regime is normally guided by a <u>labour market test</u> .
Sierra Leone	Unbound, except for senior management personnel and technical experts <u>not available in the local labour market</u> .
Solomon Islands	Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories: managers and specialists who possess knowledge that is necessary for the provision of the service. Entry and temporary stay is limited to those of key importance <u>and where employees are unavailable locally</u> . Entry is limited to two years initially with any extension subject to Immigration and Labour requirements.
St. Kitts and Nevis	The employment of foreign natural persons is subject to Work Permit regulations. Issue of permits is normally confined to people with managerial and technical skills, <u>which are in short supply or not available in St. Kitts and Nevis</u> .
St. Vincent and the Grenadines	The employment of foreign natural persons is subject to Work Permit regulations. Issue of permits is normally confined to people with managerial and technical skills <u>which are in short supply or not available in St. Vincent</u> .
Suriname	Unbound except for measures concerning senior managerial personnel and technical experts <u>not available in the local labour market</u> .
Thailand	A corporate transferee of the managerial or executive level or a specialist, provided has satisfied the <u>criteria for management needs stipulated by the Department of Employment</u> .
United States of America	Specialty occupation aliens and their employers must be in compliance with all labour condition application requirements that are attested to by the established employer. These requirements are: a) wages paid to the person are the greater of: 1) the actual wage paid by the employer to individuals in that place of employment with similar qualifications and experience, or 2) the prevailing wage for that occupational classification in the area of employment; b) conditions of work are such that they <u>will not adversely affect working conditions for those similarly employed</u> ; c) there is no strike or lockout in the course of a labour/management dispute in progress at the place of employment affecting the subject occupation; labour/management dispute in progress at the place of employment.
Venezuela	The Ministry of Labour may authorize temporary exceptions to the provision concerning length of stay and those restrictions laid down in the current labour law after having examined a particular case: In the case of activities that require special technical know-how and if there are <u>no Venezuelan personnel available</u> .
Zimbabwe	Entry and temporary stay of intra-corporate transfer of executive and senior managerial personnel and except for specialists, <u>subject to lack of availability in the local labour market</u> .

Source: Based on Schedules of Specific Commitments on Services of 134 WTO member countries.

5. A few countries have also referred to the economic needs tests as qualifying their national treatment commitments. The GATS, however, includes economic needs tests among the market access barriers listed in Article XVI (Market Access). Also, the test seems less relevant in regulating market access at the horizontal (covering all sectors) level for commercial presence, where only few cases could be mentioned.

TABLE 3

List of economic needs tests in horizontal commitments - commercial presence

Country	Relevant extracts from national schedules of specific commitments
Grenada	In such circumstances when foreign service providers are permitted to operate, an economic needs test may be required.
Kuwait	Commercial presence in all sectors and sub sectors of Services, shall need prior written permission from competent authorities, and shall be subject to economic needs test and some other considerations.
Netherlands with respect to Netherlands Antilles	Non-Antillians need a permission to establish as self-employed, for which a test of economic needs is applied.

Source: Based on Schedules of Specific Commitments on Services of 134 WTO member countries.

C. Economic needs test in specific commitments in different services sectors

6. The existence of economic needs tests has been noted in the GATS schedules of specific commitments in various services sectors. However, their relevance differs from sector to sector. Financial services, including banking and insurance, is a sector where economic needs tests have been quite important, and a number of professional and business services in general have had a relatively high incidence of the application of economic needs tests. In particular, medical and educational services, due to their dual - social and economic - function, as well as retail services and transportation, have often been safeguarded by needs tests. Interestingly enough, the application of economic needs tests has also been frequent in the tourism sector with respect to hotels and restaurant services, even in countries which have shown strong export performance in the sector. Tourism creates significant spill-over effects for employment, and the role that economic needs tests play in these sectors is likely to be that of the safeguard measure. For cases like these, the availability of emergency safeguard mechanism in the GATS could eliminate the need for recourse to needs tests.

TABLE 4

List of economic needs tests in sector-specific commitments

(Note: the following commitments refer to market access in mode 3 unless otherwise indicated)

Country	Relevant extracts from national schedules of specific commitments
Bulgaria	Medical and dental: Access is granted only to foreign natural persons and exclusively for the conduct of private professional practice. Registration and authorization <u>based on economic needs test</u> and consent by a professional organization. Veterinary services: Access is granted to natural persons exclusively for the conduct of private professional practice and under the conditions of: authorization by the veterinary authorities. <u>Economic needs test</u> . Distribution services: Wholesale: <u>Economic needs test</u> . Retail: <u>Economic needs test</u> for the establishment of department stores.
Côte d'Ivoire	Engineering services/ technical testing and analysis services/construction and related engineering services: <i>National treatment</i> . Enterprises must receive government approval. The criteria to be met in order to obtain approval may include: the <u>preferential use of local services</u> to the extent that they are available under conditions of quality, price and delivery equivalent to those of like products of foreign origin.
Czech R.	Travel agencies and tour operators: <u>Economic needs test</u> based on population criterion.
Egypt	Hotels, restaurants: A licence will be given according to the <u>requirement of economic needs test</u> . Limitations on the total number of services operations depend on the requirement of <u>economic needs test</u> . Travel agencies and tour operators: Limitations on the total number of services operations depend on the requirement of <u>economic needs test</u> .

Country	Relevant extracts from national schedules of specific commitments
Egypt (cont'd)	Tourism management services: Bound only for representative offices. Limitations on the total number of services operations depend on the requirement of <u>economic needs test</u> .
European Union	Medical, dental and midwives services: <i>Germany:</i> Access restricted to natural persons only. <u>Economic needs test</u> for medical doctors and dentists who are authorized to treat members of public insurance schemes. The criterion is shortage of doctors and dentists in the given region. Services provided by nurses, physiotherapists and paramedical personnel (mode 4): <i>Italy:</i> Subject to <u>economic needs test</u>; decision is subject to regional vacancies and shortages. Supply of pharmaceutical goods to the general public (pharmacists): <i>Belgium, Denmark, Ireland, Portugal:</i> <u>Economic needs test</u>. <i>Spain, Italy:</i> Establishment of new pharmacies is subject to an <u>economic needs test</u>. Other business services, construction, distribution and tourism services (mode 4): <i>France:</i> The managing director of an industrial, commercial or artisanal activity, if not holder of a residence permit, needs a <u>specific authorization</u>. <i>Italy:</i> Access to industrial, commercial and artisanal activities is subject to a residence permit and <u>specific authorization</u> to pursue the activity. Retailing services: <i>Belgium:</i> <u>Economic needs test</u> for department stores. <i>Denmark:</i> <u>Economic needs test</u> for new department stores. <i>France:</i> <u>Economic needs test</u> for larger department stores. <i>Italy:</i> <u>Economic needs test</u> on establishment of any new department store/outlet and authorization can be denied in order to protect areas of particular historic and artistic interest. <i>Portugal:</i> <u>Economic needs test</u> for large (i.e. more than 2000 sq. m.) department stores. Higher education services: <i>Spain, Italy:</i> <u>Needs test</u> for opening of private universities authorized to issue recognized diplomas or degrees; procedure involves an advice of the Parliament. Hospital services: <i>Belgium:</i> The number of beds and use of heavy medical equipment is limited on the basis of a health plan. <u>The needs test</u> is in function of the degree of specialization, their capacity and equipment. The criteria are fixed, arithmetical rules or formulae designed to calculate the needs in function of the population, age scale, death rate and geographical spread. <i>Netherlands:</i> Quantitative <u>economic needs test</u> fixed by a health plan allowing for a maximum number of beds related to the population of each health region. <i>Spain:</i> Prior authorization is required by the "autonomous communities" based on an <u>economic needs test</u> taking into account the population and already existing health services in the given health regions. Hotels, restaurants and catering: <i>Italy:</i> Local <u>economic needs test</u> on opening of new bars, cafés and restaurants; authorization can be denied in order to protect areas of particular historic and artistic interest. Travel agencies and tour operator services: <i>Italy:</i> <u>Economic needs test</u>. Entertainment services (mode 4): <i>Italy:</i> <u>Economic needs test</u>. sporting and other recreational services (mode 4): <i>Italy:</i> <u>Economic needs test</u>. Passenger transportation by road: <i>Spain:</i> <u>Economic needs test</u>. Taxi services: <i>All Member States:</i> <u>economic needs test</u>. Limousine services: <i>Italy:</i> Access for natural persons only, and <u>economic needs test</u>. <i>Portugal:</i> <u>Economic needs test</u>. Intercity bussing services: <i>Italy, Spain, Ireland:</i> <u>Economic needs test</u>. <i>Denmark:</i> <u>Economic needs test</u> and residence and citizenship requirement for the manager. Freight transportation by road: <i>Italy:</i> For transport within the country, licensing subject to an <u>economic needs test</u>.
Fiji	Hotels, motels, etc. (mode 4): Normal government approval required for foreign nationals. Entry limited to key-post management and time-post skilled employees where these are <u>unavailable locally</u> . Restaurants: Normal government approval and registration required for all foreign investors. Limited to speciality restaurants and hotel restaurants, where speciality restaurants <u>unavailable</u> . (mode 4): Entry limited to management and skilled employees, where these are <u>unavailable locally</u> .
Grenada	Hotels: Subject to alien landholding regulations, exchange control regulations. Limited to the developments of hotels in excess of 100 rooms. Hotel development of less than 100 rooms may be subject to an <u>economic needs test</u> .
Latvia	Private medical and dental services (modes 3 and 4): Nationality requirement. Practice of medical profession by foreigners requires the permission from local health authorities, based on <u>economic needs</u> for medical doctors and dentists in a given region.

Country	Relevant extracts from national schedules of specific commitments
Latvia (cont'd)	Services provided by midwives, nurses in private establishments (mode 4): <u>Economic needs</u> determined by the total number of nurses and midwives in the given region, authorized by local health authorities. Private hospital services: Need authorization by local health authorities. The number of beds and use of heavy medical equipment is based on <u>needs</u> of population, age scale and death rate.
Liechtenstein	Hotels and restaurants: Licence only granted if <u>need</u> for restaurants exist.
Malaysia	Private hospital: <u>Economic needs test</u> .
Norway	Passenger and freight road transportation: Passenger transportation shuttle services and other regular trips require establishment; <u>economic needs test</u> is based on traffic criterium.
Philippines	Road (passenger and freight) transport: New entrants are subject to <u>economic needs test</u> , as follows: (a) the need to provide protection to investment of operators in unserved areas/developmental routes; and (b) the route measured capacity test for number of vehicles.
Republic of Korea	Other business services (purity testing): Establishment of a commercial presence is subject to the <u>economic needs test</u> . Wholesale trade services: Following services are subject to the <u>economic needs test</u> : wholesale markets with floor space of more than 3,000m ² ; large stores with floor space of more than 3,000m ² ; wholesale trade centers; wholesale trade of used cars; wholesale trade of gaseous fuels and related products; foreign trade services. Retail: Retailing services for used cars and gaseous fuels are subject to the <u>economic needs test</u> . Refuse disposal: Establishment of a commercial presence is subject to the <u>economic needs test</u> . Environment testing: Establishment of a commercial presence is subject to the <u>economic needs test</u> . Freight forwarding for rail transport: Licenses are granted only to international shipping companies, subject to the <u>economic needs test</u> . Composition and purity testing: Establishment of a commercial presence is subject to the <u>economic needs test</u> .
Solomon Islands	General construction work for civil engineering (mode 1): <u>Market access and national treatment</u> : Unbound except where resources and materials are <u>not available</u> locally.
Swaziland	Integrated engineering services (mode 4): Unbound except for professional personnel with a higher university degree or professional training and who are <u>not available</u> in Swaziland. Consultancy services related to the installation of computer hardware (mode 4): Unbound except for senior computer engineers and personnel that possess specialized training and skill and who are <u>not available</u> in Swaziland. Management consulting (mode 4): Unbound except for personnel with a senior university degree or professional training who are <u>not available</u> in Swaziland.
Sweden	Doctors and dentists (mode 4): <u>Needs test</u> applied to decide the number of private practices to be subsidized through the social security system. Other health personnel: <u>Needs test</u> applied to decide the number of private practices to be subsidized through the social security system. Veterinary service: <u>Needs test</u> applied to decide the number of private practices to be subsidized through the social security system. Retail: Individual municipalities may apply <u>economic needs test</u> to temporary trade in clothing, shoes and foodstuffs that are not consumed at the point of sale.
Switzerland	Hotels and restaurants: Federal law enables cantons to grant licence for restaurants based on <u>economic needs</u> .
Tanzania	Hotels (mode 4): Unbound except for measures concerning senior managers who possess skills <u>not available</u> in Tanzania.
Uganda	Hotels and restaurants (mode 4): Unbound except for technical personnel except where Ugandans are or become available. Travel agencies/ tour operators (mode 4): Unbound except for technical personnel except where Ugandans are or become available. Entry and temporary stay of foreign service suppliers subject to compliance with laws, regulations and guidelines in force in Uganda.
United States of America	Hospitals: Establishment of hospitals or other health care facilities, procurement of specific types of medical equipment, or provision of specific types of medical procedures may be subject to <u>needs-based</u> quantitative limits.

Source: Based on Schedules of Specific Commitments on Services of 134 WTO member countries.

D. Binding economic needs test

7. On the other hand, a number of countries have indicated or suggested criteria for the application of economic needs tests. Though factors with respect to which needs are evaluated are often sector-specific, common features may emerge. Based on these common elements, a general criterion for the application of economic needs test could be elaborated. Also, additional provisions could be developed which would prevent the introduction of economic or similar needs tests in any other instruments regulating market access. To the extent that the remaining sectors and occupations would remain subject to the application of economic needs tests, efforts should be made to reduce the scope for arbitrary and discriminatory practices, provide greater transparency and introduce more neutral economic criteria. A reference paper could be drafted that would lay down principles of application of economic needs tests. The principles should address the definition and criteria for the introduction of economic needs tests, which could be quantitative and/or qualitative, applications, procedures, duration, etc. A number of elements are referred to in individual schedules in different services sectors, and where the establishment is subject to an economic needs test, the main criteria taken into account are:

- Population, the number of existing pharmacies and their geographical density;
- The number of and impact on existing stores, population density, geographic spread, impact on traffic conditions and creation of new employment;
- The number of service suppliers in the local geographic area;
- Existing public transport on the route concerned;
- The measured route capacity for number of vehicles;
- The need to provide protection for investment of operators in underserved areas/developmental routes.
- Size of fully paid-up capital; employment creation; extent of foreign investment; export promotion; transfer of technology; special needs of the management;
- Market needs and location of different categories of hotels;
- Geographical location, increase in the number and categories of tourists;
- Population, degree of built-up area, type of neighbourhood, tourism interests, number of existing restaurants.

Source: *Based on Schedules of Specific Commitments on Services of 134 WTO member countries.*

8. It would seem extremely unlikely that WTO members would agree to dispense with the economic needs tests in their horizontal commitments. The possible elimination of economic needs tests would have to be pursued on the basis of service sectors and/or categories of persons. One of the ways to reduce the scope for the application of economic needs tests could be for countries to agree on certain services sectors where the movement of the natural persons would be excluded from the general application of the economic needs test. The horizontal commitments on mode 4 would thus be supplemented by the list of service sectors where the economic needs test would not be applied to the movement of natural persons supplying services. For example, the liberalization negotiations in the environmental services sector could be extended to the removal of the economic needs test for mode 4, where the movement of those providing management consulting, setting up the establishment to provide the environmental services, performing related training of the personnel, etc., is an important component of the service. Concepts used elsewhere in multilateral trade agreements such as "minimum" market access or "current" market access could also be considered in this context in establishing a minimum quota for trade-related test-free market access of natural persons.

9. The sectoral approach in establishing the economic needs test exemption list may seem

too broad in some cases, since commitments in mode 4 would apply to natural persons of all professions supplying services in a given sector. The economic needs test exemption list could then be created based on the occupation approach. The ILO International Standard Classification of Occupations (ISCO), as an internationally adopted classification, has defined nine major occupation groups: (1) legislators, senior officials and managers; (2) professionals; (3) technicians and associate professionals; (4) clerks; (5) service workers and shop and market sales workers; (6) skilled agricultural and fishery workers; (7) craft and related trades workers; (8) plant and machine operators and assemblers; (9) elementary occupations. These groups are further sub-divided into sub-major, minor and unit group titles that have corresponding detailed definitions. Not all of these occupations are equally important to the movement of persons in the context of international trade in services. Agreement could be reached multilaterally as to which among them should be selected, and on that basis occupational list could be established. Occupational list would introduce greater comparability and balance in specific commitments for mode 4, since a single system of definitions would be adopted. It may be noted that a similar approach has been used in the GATS in establishing services sectoral classification list, which was based on the then Provisional UN Central Product Classification. The occupation list could then be used to identify those occupations for which economic needs tests could be waived in all sectors or in selected sectors, listed separately and subject to individual schedules of commitments.

10. However, even where persons meet the criteria set under mode 4, whether or not subject to an economic needs test, the administration of the visa regime can pose another barrier to trade through movement of persons. Thus, efforts should be made to streamline visa regimes when visa issuance is requested for the trade-related movement of persons. The categories of natural persons and occupations that are included into the schedules of commitments should qualify to obtain entry visas, i.e. GATS visas, either automatically or for multiple entries over a long period. It must be noted that economic needs tests operate as a barrier to trade in cases where the persons involved are employed by an entity in the importing country (either a domestic firm or a foreign firm established there). However, visa regimes also affect business visitors whose travel is linked to making business contacts or setting up a new business. Initiatives in the regional context to improve the conditions under which business visitor visas are granted should be brought into the WTO.